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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91161954
Party	Plaintiff PABST BREWING COMPANY
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Submission	Motion to Reopen
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Date	03/31/2009
Attachments	2009-03-31 FILED Opposer's Motion for Leave to Re-Open Discovery and Testimony Periods.pdf (3 pages)(123202 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Pabst Brewing Company)	
Opposer,)	Opposition No. 91161954
)	Opposition No. 91161955
)	
v.)	
)	Serial Nos.: 75/883,254 and 75/883,253
Lone Star Steakhouse & Saloon)	Mark: LONE STAR (and Design)
Applicant.)	

**OPPOSER'S MOTION FOR LEAVE TO
RE-OPEN DISCOVERY AND TESTIMONY PERIOD**

Opposer Pabst Brewing Company ("Opposer"), by and through its attorneys, hereby requests that the Board re-open the discovery and testimony periods.

This proceeding was placed in suspension on or about November 13, 2006 at the parties' request so that an amicable outcome could be negotiated. For the reasons listed below, Opposer did not file its Brief in accordance with Trademark Rule 2.128(a) and (b). As a result, on December 18, 2007, the Board issued an order allowing Opposer thirty days to show cause why the Board should not treat its failure to file a brief as concession of the case and entering judgment dismissing the Notice of Opposition with prejudice against Opposer. On January 22, 2008, Opposer filed its Response To Order to Show Cause explaining that since the Opposition was suspended, 1) applicant had changed leadership which caused lapses in communication, 2) Opposer had mounting business which necessitated international travel, 3) Opposer was of the opinion that Applicant was considering a settlement proposal and was awaiting Applicant's reply, and 4) Opposer was under the impression that the proceedings were suspended pending settlement between the parties. Additionally, Opposer maintained that Opposer had not lost interest in the proceedings and, in the event settlement could not be reached, Opposer desired to actively pursue this litigation.

Consequently, the Board set aside the show cause order and reset the briefing schedule as follows:

Opposer's Brief, if filed, Due	March 31, 2009
Applicant's Brief, if filed, Due	April 30, 2009
Opposer's Reply Brief, if filed, Due	May 15, 2009

However, for the same reasons listed above, the parties did not engage in discovery nor submit evidence during the testimony period. As a result, Opposer requests extension and re-opening of those periods.

For the reasons listed in the contemporaneously filed Opposer's Trial Brief, and based on evidence submitted vis-à-vis Opposer's Notices of Reliance,¹ Applicant's Application Serial Nos. 75/883,253 and 75/883,254 should not be granted substantively. Applicant could only prevail by having Opposer's evidence struck for technical defect. The discovery and testimony periods should be re-opened to the extent Applicant objects to the evidence Opposer relies upon in its Trial Brief to correct such technical deficiencies and so that justice may be done.

Opposer maintains an interest in resolving this matter amicably. However, should Applicant refuse, Opposer desires to conduct discovery and submit testimony in order to resolve this proceeding. Opposer respectfully requests that the discovery and testimony period be re-opened so that Opposer is allowed to actively pursue the litigation.

¹ 1) Opposer's First Notice of Reliance filed on March 9, 2009; 2) Opposer's Second Notice of Reliance filed on March 9, 2009; and 3) Opposer's Third Notice of Reliance filed on March 9, 2009; 4) Opposer's Notice of Reliance filed on March 26, 2009; 5) Opposer's Fifth Notice of Reliance filed on March 30, 2009; 6) Opposer's Sixth, Seventh, Eighth and Ninth Notices of Reliance filed on March 31, 2009.

Respectfully submitted,

/S/ William B. Nash

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CERTIFICATE OF TRANSMISSION

I hereby certify that a copy of the foregoing instrument is being electronically transmitted on this the 31st day of March, 2009, to the following:

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/S/ William B. Nash

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